

1 Phil Mendel
2 Councilmember Phil Mendelson

3 Jack Evans
4 Councilmember Jack Evans

5 Jim Graham
6 Councilmember Jim Graham

7 Linda S. Cropp
8 A BILL

9 Kevin Chavous
10 Councilmember Kevin Chavous

11 Kathy Patterson
12 Councilmember Kathy Patterson

13 Sharon Gaudette

14
15
16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

17 Councilmembers Phil Mendelson, Kevin Chavous, Jack Evans, Jim Graham and Kathy Patterson
18 introduced the following bill, which was referred to the Committee on

19
20 To establish an urban forest preservation program; to require community notice prior to the
21 removal or replacement of trees on public space; to revise penalties for injuring trees on
22 public space and private property; to establish a Tree Advisory Board; and for other
23 purposes.

24
25 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
26 act may be cited as the "Urban Forest Preservation Act of 2001".

27
28 TITLE I. URBAN FOREST PRESERVATION.

29 Sec. 101. Findings and Purposes.

30 (a) The urban forest of the District of Columbia, growing on both public land and private
31 land, is one of the District's great natural resources.

32 (b) A healthy, vibrant urban forest provides numerous environmental benefits, including:

- 33 (1) heat island effect mitigation;
34 (2) better climate and air quality, such as from the cleansing of automobile
35 exhaust and the production of oxygen through photosynthesis;
36 (3) reduced energy demand, such as from a lesser need for indoor air

1 conditioning;

2 (4) improved soil permeability, which in turn lessens pollution from storm water
3 runoff and soil erosion;

4 (5) an improved habitat for a healthy and diverse ecosystem;

5 (6) an aesthetically pleasing human environment; and

6 (7) in general, good public health and economic well being.

7 (c) A robust urban forest will promote multi-state efforts to improve the quality of the
8 Potomac and Anacostia Rivers and the Chesapeake Bay.

9 (d) The trees comprising the urban forest have significant aesthetic value, which
10 enhances property values and the quality of life in neighborhoods throughout the District.

11 (e) The preservation of the District's urban forest is an important trust responsibility
12 shared by both the public and private sectors of the District of Columbia.

13 (f) To ensure a healthy urban forest for future generations, the Council hereby determines
14 to establish an urban forest preservation program aimed at preserving and increasing the value of
15 the urban forest of the District of Columbia.

16 Sec. 102. Definitions.

17 For the purposes of this act, the term:

18 (1) "Board" means the Tree Advisory Board established pursuant to title 3.

19 (2) "Circumference," means the perimeter of a tree measured at a height of 4.5 feet above
20 the ground.

21 (3) "Concealment inspection" means the building inspection made before permission is
22 given to cover floors and interior walls.

23 (4) "Construction area" means the area within which construction occurs, and includes
24 any staging area for construction as well as motor vehicle parking for equipment and construction
25 workers.

26 (5) "Critical root zone" means the area immediately surrounding a tree. The radius of
27 this area, measured from the center of the tree, shall be equal to one foot for each 3.14 inches of
28 circumference, except that for trees with a circumference of at least 94.3 inches the radius shall

1 be equal to 1.5 feet for each 3.14 inches of circumference.

2 (6) "Deforestation statement" means a written statement specifying the location, size, and
3 scheduled value of all trees 25 inches or greater in circumference that either has been removed
4 within the past 24 months or that may be removed or endangered in connection with proposed
5 construction. A tree shall be considered removed or endangered if:

6 (A) it was removed within 24 months prior to the date when the deforestation
7 statement or reforestation plan is filed;

8 (B) it is proposed for removal in the deforestation statement; or

9 (C) it is an endangered tree.

10 (7) "Director" means the Director of the Department of Public Works, or successor
11 agency.

12 (8) "Endangered tree" means a tree whose critical root zone, all or in part, is within a
13 construction area or a tree that may be adversely impacted by a change in its surroundings,
14 including demolition, construction, dewatering, and reduction in pervious surfaces. An
15 endangered tree may be on property adjacent to the construction area.

16 (9) "Fund" means the Tree Fund established pursuant to section 107.

17 (10) "Maintenance" and related phrases pertaining to tree maintenance mean the upkeep
18 of one or more saplings or trees in a healthy state. Maintenance includes: assuring adequate soil
19 conditions, providing water in times of drought, rendering professional pruning, and feeding as
20 appropriate. A maintenance plan shall require replacement of any sapling that dies or is dying
21 during the pendency of the plan.

22 (11) "Mayor" means the Mayor of the District of Columbia or his designee.

23 (12) "Program" means the Urban Forest Preservation Program established pursuant to
24 section 103.

25 (13) "Reforestation plan" means a plan, prepared pursuant to section 106, which specifies
26 tree preservation measures and the replacement of trees specified in an accompanying
27 deforestation statement.

28 (14) "Residence" means a single family dwelling that is owner-occupied by a

1 deforestation applicant.

2 (15) "Sapling" means an immature tree with a circumference of not less than 6.28 inches:
3 *provided*, that the Mayor may, by rule, establish lesser sizes for saplings to be permitted under
4 specific planting conditions related to a maintenance plan, the clustering of saplings, the use of
5 the area being planted, and similar factors. A sapling shall not include any species that is
6 generally incapable of reaching a circumference of 25 inches.

7 (16) "Scheduled value" means the value of a tree according to the tree value schedule
8 established pursuant to section 104.

9 (17) "Tree" means any plant species that is commonly considered to be a tree, that is
10 living, and that has reached a circumference of 25 inches or greater. A tree that is afflicted with a
11 disease from which, in the written opinion of a certified arborist, the tree will not survive shall
12 not be considered a living tree.

13 (18) "Tree registry" means a computerized registry of all trees registered by private
14 property owners, all trees listed in reforestation plans, and all District-owned trees. The registry
15 shall be maintained by the Mayor on an automated geographic information system (GIS) with
16 individual records formatted so as to enable their integration with the District's real property
17 assessment records.

18 (19) "Urban forest" means all of the trees standing within the boundaries of the District
19 of Columbia.

20 Sec. 103. Establishment of the Urban Forest Preservation Program.

21 There is hereby established an Urban Forest Preservation Program for the District of
22 Columbia which shall be administered by the Mayor. The Mayor shall be responsible for:

23 (1) preparing an annual program for tree planting and tree care in the public space of the
24 District;

25 (2) preparing a master tree plan and making changes to the plan from time to time;

26 (3) ensuring that the tree registry is fully operational and current not more than two years
27 after the effective date of this act;

28 (4) developing maintenance standards as they relate to trees in public space;

- 1 (5) inspecting the planting, maintenance, and removal of all trees in public space;
2 (6) making determinations of tree removals in public space;
3 (7) reviewing all landscaping plans as they affect trees in public space;
4 (8) collecting and maintaining all records and data necessary to objectively evaluate
5 whether progress is being made toward the stated goals of this program, including a complete
6 tree registry; and
7 (9) preparing an annual Urban Forest Management Planning Report, including
8 recommendations for action, to be presented to the Council in February of each year. With input
9 from the Tree Advisory Board, this annual report shall describe the state and condition of the
10 District's urban forest.

11 Sec. 104. Tree value schedule.

12 (a) The Mayor shall formulate and maintain a tree value schedule consistent with the
13 basic formula value of trees established in the most recent edition of *"Evaluation of Landscape*
14 *Trees, Shrubs, and Other Plants: A Guide to the Methods and Procedures for Appraising*
15 *Amenity Plants,"* published by the International Society of Arborists and adopted by the Council
16 of Tree and Landscape Appraisers, Washington, D.C. In the event this publication is not
17 available or becomes out of date, the Mayor shall by rule select another authority for tree
18 valuation.

19 (b) In using the schedule established pursuant to this section, measurements shall be
20 rounded to the nearest value listed on the schedule.

21 Sec. 105. Permit requirements.

22 (a) With each application to the District government for a permit to alter, build,
23 construct, or demolish, there shall be included a deforestation statement and a reforestation plan.
24 If a deforestation statement certifies that no tree shall be removed or endangered, then no
25 reforestation plan shall be required.

26 (b) The scheduled value of each tree included in the deforestation statement shall be
27 added to the permit fee required of the applicant, except that in the case of a residence the
28 amount to be added shall be one-half the scheduled value. If the permit is a re-issuance for

1 which the amounts required by this subsection have been collected previously, no scheduled
2 value shall be collected again.

3 (c)(1) For any endangered tree specified in a deforestation statement, the permit applicant
4 may post with the Mayor a bond, or any other security the Mayor shall prescribe ("security"), in
5 lieu of paying the scheduled value required by subsection (b) of this section.

6 (2) The security shall be accepted only if the following conditions are met:

7 (A) The deforestation statement provides that less than 20 percent of the
8 critical root zone of the endangered tree will be within the construction area;

9 (B) Protective measures such as fencing, pruning, and watering are being
10 taken to aid the tree's health; and

11 (C) A written opinion by a certified arborist is submitted which states that
12 the protective measures being taken are adequate to preserve the health and ensure the survival of
13 the tree.

14 (3) The security shall be an amount equal to the scheduled value of the
15 endangered tree. The security shall be posted or given simultaneously with the payment of the
16 permit fee and shall be held until a written opinion by a certified arborist is submitted which
17 states that the tree is healthy. The opinion shall be dated no earlier than 2 growing seasons after
18 the completion of all endangering construction work. If the opinion is not submitted within 5
19 years after the completion of all of the endangering construction work, or if the opinion is not
20 verified by the Mayor, then the Mayor shall collect against the security and deposit the proceeds
21 into the Tree Fund established pursuant to section 107.

22 (4) Upon application by the affected permit applicant, including a successor in
23 interest, the Mayor shall refund the scheduled value, without interest, which had been paid
24 pursuant to this section for an endangered tree: *provided*, that appropriate documentation is
25 submitted, including the written opinion by a certified arborist, which verifies that the tree is
26 healthy, provided further, that the application shall be filed between 3 and 5 years after the
27 completion of all of the endangering construction work.

28 (d) The reforestation plan, upon acceptance by the Mayor, shall be a condition of the

1 permit.

2 Sec. 106. Reforestation requirements.

3 (a) A reforestation plan shall specify what measures, if any, will be taken to preserve or
4 aid each existing and endangered tree. The measures may include, but are not limited to, fencing
5 to protect tree trunks and critical root zones, the pre-construction pruning of foliage or roots, and
6 post-construction soil aeration. No right of access is created by this act for an endangered tree
7 located on property adjacent to the construction area.

8 (b) The reforestation plan shall provide for the replacement of each tree specified on a
9 deforestation statement according to the following ratio:

10 (1) A tree smaller than 37.7 inches in circumference shall be replaced with a
11 sapling on a one-for-one basis.

12 (2) A tree greater than or equal to 37.7 inches in circumference shall be replaced
13 by a quantity of saplings whose aggregated circumference equals or exceeds the circumference of
14 the endangered or removed tree.

15 (3) Replacement saplings shall be chosen from a general list of native plant
16 species approved by the Mayor for citywide use.

17 (c)(1) The reforestation plan shall stipulate where reforestation will occur. Reforestation
18 shall occur either within one mile of the deforestation site and within the District of Columbia, or
19 within the Advisory Neighborhood Commission in which the deforestation occurs. The
20 reforestation may be on either public or private land.

21 (2) If a reforestation plan stipulates reforestation on private land, the plan shall
22 evidence a commitment of the property owner showing acceptance of the reforestation plan
23 regarding his or her land and stating agreement to implement a 2 year maintenance plan for each
24 replacement sapling.

25 (3) If a reforestation plan stipulates reforestation on public land (District or
26 federal), the plan shall include a letter from the appropriate public agency approving and
27 accepting the stipulation. A maintenance plan may be required as part of the reforestation plan
28 for any replacement tree planted on public land.

1 Sec. 107. Tree Registration

2 (a) There is established a tree registration program through which trees of significance to
3 their owners or the community may be registered with the Director. The Director shall provide
4 suitable markers for trees registered under this program.

5 (b) A property owner wishing to register his or her tree or trees may do so on a form to
6 be provided by the Director. The registration form shall include the tree's species, location and
7 circumference. The form shall also include an agreement binding the property owner at his or
8 her expense to maintain the registered tree for ten years, to refrain from removing it unless
9 pursuant to a reforestation plan attached to a permit, and to replace the tree with a sapling if it is
10 destroyed by whatever cause. At the option of the property owner, the agreement may be
11 renewed for additional periods of 10 years.

12 (c) The Director may register a tree without an application by the property owner if the
13 tree is especially impressive or an unusual example of a species due to its size, shape, age, or any
14 other trait that epitomizes the character of the species, and if the following conditions are met:

15 (1) The Director has received a request formally adopted by the Historic
16 Preservation Review Board established pursuant to the Historic Landmark and Historic District
17 Protection Act of 1978, effective March 3, 1979 (D.C. Law 2-144; D.C. Code §5-1003); or

18 (2) The Director has given 30 day written notice of proposed action to register the
19 tree to the property owner and the affected Advisory Neighborhood Commission or Commissions
20 and the affected Commission does not oppose the registration.

21 Sec. 108. Tree Fund.

22 (a) There shall be established a fund designated as the Tree Fund, which shall be separate
23 from the general fund of the District of Columbia and shall be used solely for those purposes set
24 forth in subsection (b) of this section. Monies deposited into the Fund shall not revert to the
25 General Fund of the District of Columbia at the end of any fiscal year or at any other time, but
26 shall be continually available for the uses and purposes set forth in subsection (b) of this section.
27 Donations as well as all deforestation fees collected pursuant to section 105 shall be deposited
28 into this fund. All additional permit fees collected under this act shall be deposited into this

1 fund. All receipts shall be deposited as soon as practicable. The Director shall maintain the
2 Fund in coordination with the Chief Financial Officer of the District of Columbia.

3 (b) The Fund shall be used to provide markers for registered trees, to replace trees
4 registered pursuant to section 107 and which die, become unhealthy, or are removed, to replace
5 public space trees of any size, including saplings, and to provide assistance for private and public
6 tree replacement necessitated by storm damage and other acts of nature. The fund shall not be
7 used to pay for the removal of any tree or any part of a tree, to replace any tree removed pursuant
8 to a deforestation statement, or to purchase any type of plant other than saplings.

9 (c) The Director shall submit to the Mayor and to the Council a semi-annual statement
10 of all receipts and disbursements of the fund.

11 (d) Private donations to the Tree Fund that are not required by this or any other law shall
12 be tax deductible for purposes of District income and franchise taxes.

13 Sec. 109. Trees on Public Space.

14 (a) A tree or sapling on public space shall be removed only by a duly authorized
15 representative of the Mayor. Prior to the removal of a tree on public space, unless the tree is
16 dead or dangerous and in need of immediate removal, the Director shall provide not less than
17 seven days' written notice, excluding Saturdays, Sundays, and legal holidays. This notice
18 shall be provided to the affected Advisory Neighborhood Commission, the seven days counted
19 from the date of postmark or hand delivery, shall be posted on the tree to be removed, and
20 shall set forth the reason for the proposed removal. Not more than two years after the
21 effective date of this act, the notice also shall specify the location, species, size, approximate
22 age, and scheduled value of the tree sought to be removed, and shall specify a plan to replace
23 the tree, describing location, species, size, and scheduled value of the replacement tree or
24 trees.

25 Section 110. Dangerous and Fallen Trees.

26 Nothing in this title shall prohibit the Mayor or a property owner from removing
27 immediately a dead tree or sapling, dead part of a tree or sapling, or a stump from the ground, or
28 to remove all or part of a tree or sapling that is infected with Dutch Elm disease or that presents a

1 clear and present danger to the safety of person, building, or public improvement.

2 Section 111. Enforcement.

3 (a) The Mayor shall deny approval of a building permit until assured of an applicant's
4 compliance with section 105 of this act.

5 (b) The Mayor shall deny a certificate of occupancy for a building until assured of an
6 applicant's compliance with the reforestation plan attached to a permit. In cases where a
7 certificate of occupancy is not required, the Mayor shall deny approval to proceed beyond the
8 concealment inspection stage until assured of an applicant's compliance with the reforestation
9 plan attached to the permit.

10 (c) Civil fines, penalties, and fees may be imposed as additional sanctions for any
11 infraction of the provisions of this title, or any rules or regulations issued under the authority of
12 this title, pursuant to titles I-III of the Department of Consumer and Regulatory Affairs Civil
13 Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Code § 6-2701 *et seq.*)
14 ("Civil Infractions Act"). If the infraction includes the removal of a tree in violation of any
15 provision of this title, including a deforestation statement, then the fine shall include three times
16 the scheduled value of each such tree. Adjudication of any infraction shall be pursuant to titles I-
17 III of the Civil Infractions Act.

18
19 TITLE II

20 PROTECTION OF TREES AS PROPERTY

21 Sec. 201. Section 13 of an Act for the preservation of the public peace and the protection
22 of property within the District of Columbia, approved July 29, 1892 (27 Stat. 324; D.C. Code §
23 22-3110) is amended to read as follows:

24 "Sec. 13. It shall be unlawful for any person or persons willfully and wantonly to girdle,
25 break, wound, destroy, or in any manner injure any of the trees now growing or planted and set,
26 and which may hereafter be planted and set, on any of the public grounds, open spaces, or
27 squares or on any private lot, or on any of the streets, avenues, roads, or highways in the District
28 of Columbia, or any of the boxes, stakes or any other protection thereof, under a penalty of not

1 exceeding \$2,500 or imprisonment for not more than 30 days, or both, for each and every such
2 offense."

3 Sec. 202. Article XVI of the Police Regulations of the District of Columbia, as adopted
4 by order of the Commissioners May 24, 1902 (24 DCMR §§ 107.5, 107.6, 107.7, and 108.2) is
5 amended to read as follows:

6 "Sec. 1. With regard to any tree located on any street, avenue, or other public space in the
7 District of Columbia, no person shall:

8 "(a) hitch or fasten an animal to such tree, or to any supporting stake or guy, or to any
9 protective fencing;

10 "(b) trim, prune, or whitewash any such tree unless with a permit issued by the Mayor;

11 "(c) unless with a permit issued by the Mayor, pile material about any such tree, or to
12 place or store cement, asphalt, soil or any other substance which impedes the access of air and
13 water to the roots of the tree, or to place salt, brine, petroleum products, weed killer, or any other
14 substance in such an amount to be injurious to the tree;

15 "(d) attach an advertisement, guy, rope, or wire (unless the guy is to support the tree)
16 except with a permit issued by the Mayor; or

17 "(e) wound, destroy, or in any manner injure such tree.

18 "Sec. 2. Civil fines, penalties, and fees may be imposed as additional sanctions for any
19 infraction of these provisions, pursuant to titles I-III of the Department of Consumer and
20 Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C.
21 Code § 6-2701 *et seq.*)."

22 Section 203. Within 240 days of the effective date of the Urban Forest Preservation Act
23 of 2001 the Mayor shall promulgate rules for the construction of tree boxes that are adjacent to
24 roads and in the public space. These rules shall require adequate aeration, drainage, soil, and
25 space for tree growth.

26
27 TITLE III
28 TREE ADVISORY BOARD

1 Sec. 301. There is established a Tree Advisory Board to consist of 7 members appointed
2 by the Mayor with the advice and consent of the Council. At least 3 members of the Board shall
3 have professional experience in landscape architecture or another tree-related field. No member
4 of the Tree Advisory Board shall be a District government employee at the time of his or her
5 nomination or appointment by the Mayor.

6 Sec. 302. Members of the Board shall be appointed for terms of three years and may hold
7 over until their successors are appointed.

8 Sec. 303. The Board shall meet on at least a quarterly basis.

9 Sec. 304. The Tree Advisory Board shall:

10 (1) advise the Mayor and the Director on city plans and policies which impact the city's
11 urban forest;

12 (2) recommend legislation relating to the urban forest;

13 (3) advise the Mayor and the Director about the annual Urban Forest Management
14 Planning Report required under section 103; and

15 (4) serve as a forum for the community to provide input into the city's urban forest
16 policies and practices.

17 Sec. 305. The Mayor shall provide the Tree Advisory Board with support staff.

18 Sec. 306. Members of the Tree Advisory Board shall receive no compensation, but may
19 be reimbursed for out-of-pocket expenses incurred while carrying out the official business of the
20 Board.

21
22 TITLE IV

23 CANOPY EXPANSION

24 Sec. 401. Subject to appropriation, actual expenses not to exceed \$300 per tree for the
25 installation of new trees are tax deductible for purposes of District income and franchise taxes,
26 except that expenses incurred while implementing a reforestation plan are not deductible.

27
28 TITLE V

1 RULES, FISCAL IMPACT, AND EFFECTIVE DATE

2 Sec. 501. Rules.

3 The Mayor, pursuant to title 1 of the District of Columbia Administrative Procedure Act,
4 approved October 21, 1968 (82 Stat. 1204; D.C. Code § 1-1501 *et seq.*), shall issue rules, if
5 necessary, to implement the provisions of this act.

6 Sec. 502. Fiscal Impact.

7 The Council adopts the fiscal impact statement in the committee report as the fiscal
8 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
9 approved December 24, 1973 (87 Stat. 813 ; D.C. Code § 1-233(c)(3)).

10 Sec. 503. Effective Date.

11 This act shall take effect following approval by the Mayor (or in the event of veto by the
12 Mayor, action by the Council to override the veto), approval by the Financial Responsibility and
13 Management Assistance Authority as provided in section 203(a) of the District of Columbia
14 Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109
15 Stat. 116; D.C. Code § 47-392.3(a)), and a 30-day period of Congressional review as provided in
16 section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87
17 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.
18